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3 **DRUG AND ALCOHOL TESTING REGULATIONS**

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6 **PART I. AUTHORITY AND PURPOSE.**

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8 The following rules and regulations for drug and alcohol
9 testing of employees and job applicants by public and private
10 employers are duly adopted and promulgated by the Mississippi
11 State Board of Health pursuant to the authority expressly
12 conferred by the laws of the State of Mississippi at Sections
13 71-7-1, et. al., of the Mississippi Code of 1972, Ann.,
14 hereinafter referred to as "the Act".

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16 The purpose of these rules and regulations is to promulgate
17 standards and guidelines concerning:

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- 19 1. Standards for drug and alcohol testing, laboratory
20 certification, suspension and revocation of
21 certification;
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- 23 2. Body specimens that are appropriate for drug and alcohol
24 testing;
- 25
- 26 3. Retention and storage procedures to ensure reliable
27 results on confirmation tests and retests;
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- 29 4. Initial drug and alcohol tests and confirmation tests;
30 and
- 31
- 32 5. Standard language to be included in employer's drug and
33 alcohol testing notices concerning:
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 - 35 a. A statement advising the employee of the existence
36 of state statutes on employer drug and alcohol
37 testing;
 - 38
 - 39 b. A general statement concerning confidentiality; and
 - 40
 - 41 c. Procedures for how employees can confidentially
42 report the use of prescription or nonprescription
43 medications prior to being tested.
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45 **PART II. SCOPE.**

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47 In the State of Mississippi, every public and private employer
48 who voluntarily implements a drug and alcohol testing policy
49 and program, pursuant to the Act, shall do so in accordance
50 with these regulations. Any person or entity who collects
51 specimens for drug and alcohol testing, who conducts initial
52 and/or confirmation tests, or who conducts retests on
53 specimens after a positive confirmation test, pursuant to the
54 Act, shall do so in accordance with these regulations.
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57 **PART III. DEFINITIONS.**

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59 **Alcohol.** Ethyl alcohol.
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61 **The Act.** Sections 71-7-1, et.al., of the Mississippi Code of
62 1972, Ann.
63

64 **Board.** The Mississippi State Board of Health.
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66 **Confirmation Test.** A drug and alcohol test on a specimen to
67 substantiate the results of a prior drug and alcohol test on
68 the specimen. The confirmation test must use an alternate
69 method of equal or greater specificity than that used in the
70 previous drug and alcohol test.
71

72 **Department.** The Mississippi State Department of Health.
73

74 **Drug.** An illegal drug, or a prescription or nonprescription
75 medication.
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77 **Drug and Alcohol Test.** A chemical test administered for the
78 purpose of determining the presence or absence of a drug or
79 alcohol or their metabolites in a person's bodily fluids.
80

81 **Employee.** Any person who supplies a service for remuneration
82 or pursuant to any contract for hire to a private or public
83 employer in this state.
84

85 **Employer.** Any individual, organization or government body,
86 subdivision or agency thereof, including partnership,
87 association, trustee, estate, corporation, joint stock
88 company, insurance company or legal representative, whether

89 domestic or foreign, or the receiver, trustee in bankruptcy,
90 trustee or successor thereof, and any common carrier by mail,
91 motor, water, air or express company doing business in or
92 operating within this state, or which has offered or may offer
93 employment to one or more individuals in this state.

94
95 **Illegal Drugs.** Any substance, other than alcohol, having
96 psychological and/or physiological effects on a human being
97 and that is not a prescription or nonprescription medication,
98 including controlled dangerous substances and controlled
99 substance analogs or volatile substances which produce the
100 psychological and/or physiological effects of a controlled
101 dangerous substance through deliberate introduction into the
102 body.

103
104 **Initial Test.** An initial drug or alcohol test to determine
105 the presence or absence of drugs or alcohol or their
106 metabolites in specimens.

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108 **Laboratory.** Any laboratory that is currently certified or
109 accredited by the federal Clinical Laboratory Improvement Act,
110 as amended, by the federal Substance Abuse and Mental Health
111 Services Administration, by the College of American
112 Pathologists, or that has been deemed by the State Board of
113 Health to have been certified or accredited by an appropriate
114 federal agency, organization or another state.

115
116 **MRO.** Medical Review Officer.

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118 **Medical Review Officer.** A licensed physician responsible for
119 receiving laboratory results generated by an employer's drug
120 and/or alcohol testing program who has knowledge of substance
121 abuse disorders and has appropriate medical training to
122 interpret and evaluate an individual's positive test result
123 together with his or her medical history and any other
124 relevant biomedical information.

125
126 **Nonprescription Medication.** A drug that is authorized
127 pursuant to federal or state laws for general distribution and
128 use without a prescription in the treatment of human diseases,
129 ailments, or injuries.

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Prescription Medication. A drug prescribed for use by a duly licensed physician, dentist or other medical practitioner licensed to issue prescriptions.

SAMHSA. Substance Abuse and Mental Health Services Administration.

Specimen. A tissue or product of the human body chemically capable of revealing the presence of drugs in the human body.

PART IV. THE DRUGS.

1. An employer may include in its drug and alcohol testing protocols marijuana, cocaine, opiates, amphetamines, phencyclidine, alcohol and other controlled substances. However, if testing for controlled substances other than those specifically named above is conducted, testing for such substances can be done only if an appropriate federal agency has established an approved protocol and positive threshold for each such substance.
2. Specimens collected under Department regulations may only be used to test for controlled substances designated for testing as described in this section and shall not be used to conduct any other analysis or test unless otherwise specifically authorized by Department regulations.
3. This section does not prohibit procedures reasonably incident to analysis of the specimens for controlled substances (e.g., determination of pH or tests for specific gravity, creatinine concentration or presence of adulterants).

PART V. BODY SPECIMENS APPROPRIATE FOR DRUG AND ALCOHOL TESTING.

1. Drugs - Urine for initial and confirmation tests.
2. Alcohol - Breath and/or saliva for initial tests;
- Blood for confirmation tests.

PART VI. COLLECTION OF SPECIMENS; INITIAL TESTING AND ANALYSIS PROCEDURES.

1. Employers who implement a drug and alcohol testing program pursuant to the Act shall contract with manufacturers, vendors, or other providers of drug and alcohol testing devices, or with a laboratory, for the purpose of initial drug and alcohol testing of employees to:
 - a. Train employees of the employer implementing the drug and alcohol testing program in the collecting of specimens and the administering of initial tests; or
 - b. Provide the employer with personnel to collect specimens and administer the initial tests.
2. A specimen for a drug and alcohol test may be taken by any of the following persons:
 - a. A physician, a registered nurse or a licensed practical nurse;
 - b. A qualified person employed by a laboratory; ~~or~~
 - c. An employee or an independent contractor of the employer conducting a drug and alcohol testing program pursuant to the Act who has been trained in the collecting of specimens by a manufacturer, vendor, or other provider of drug and alcohol testing devices, or by a laboratory; or
 - d. Any person deemed qualified by the State Board of Health.
3. Any initial drug or alcohol test yielding a positive result shall be followed by an appropriate confirmation test.

PART VII. CONFIRMATION TEST - LABORATORY ANALYSIS PROCEDURES - REPORTING RESULTS.

1. Employers who implement a drug and alcohol testing program pursuant to the Act shall contract with a laboratory to conduct confirmation tests on specimens which produce a positive result in testing for drugs or alcohol in the initial.
2. Laboratories, as certified or accredited as defined herein, which conduct confirmation drug and alcohol tests are required to have the following:
 - a. Methods of analysis and procedures to ensure reliable drug and alcohol testing results, including standards for initial tests and confirmation tests.
 - b. Chain-of-custody procedures to ensure proper identification, labeling and handling of specimens being tested,
 - c. Retention and storage procedures to ensure reliable results on confirmation tests and retests, and
 - d. Guidelines on how to establish cut-off detection levels for drugs or their metabolites for the purposes of determining a positive test result.
4. Results of the confirmation test shall be reported by the laboratory to the employer's Medical Review Officer in accordance with the provisions set forth herein.
5. All employers shall have a Medical Review Officer who shall be responsible for receiving and interpreting laboratory results of drug and alcohol tests. Said MRO shall be the sole person authorized to review the results of such tests.
6. The laboratory shall report confirmation test results to the employer's Medical Review Officer within an average of five (5) working days after receipt of the specimen by the laboratory. The report shall identify the drugs/metabolites tested for, whether positive or negative, the specimen number assigned by the employer, and the laboratory specimen identification number (accession number).

- 264 7. The laboratory shall report as negative all specimens
265 that are negative on the initial test or negative on the
266 confirmation test. Only specimens confirmed positive
267 shall be reported positive for a specific drug or
268 alcohol.
269
- 270 8. The laboratory shall send only to the Medical Review
271 Officer the drug or alcohol testing results which, in the
272 case of a report positive for drug or alcohol use, shall
273 be signed by the individual responsible for day-to-day
274 management of the laboratory or the individual
275 responsible for attesting to the validity of the test
276 reports.
277
- 278 9. Unless otherwise instructed by the employer in writing,
279 all records pertaining to a given urine or blood specimen
280 shall be retained by the drug testing laboratory for a
281 minimum of 2 years.
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- 283 10. Laboratories will preserve positive specimens in such a
284 manner as to ensure that said specimens will be available
285 for any necessary retests in accordance with the Act.
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288 **PART VIII. LABORATORY CERTIFICATION, SUSPENSION AND**
289 **REVOCATION OF CERTIFICATION.**
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291 A laboratory, as defined herein, is such a facility that is
292 currently certified or accredited by the federal Clinical
293 Laboratory Improvement Act, as amended, by the federal
294 Substance Abuse and Mental Health Services Administration, by
295 the College of American Pathologists, or that has been deemed
296 by the State Board of Health to have been certified or
297 accredited by an appropriate federal agency, organization or
298 another state. Suspension and/or revocation of its standing
299 as a laboratory by its certifying or accrediting body shall be
300 deemed as suspension and/or revocation of its standing as a
301 laboratory for the purposes of drug and alcohol testing.
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304 **PART IX. STANDARD LANGUAGE.**
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306 Any employer in the State of Mississippi who utilizes an
307 employee and/or job applicant drug and alcohol testing
308 program, pursuant to the Act, shall in its written policy

statement and notice to employees include as a part of such written policy statement and notice the following wording:

(1) You are hereby advised that (**Insert name of employer here**) has implemented a drug and alcohol policy and conducts a testing program, pursuant to Sections 71-7-1, et.al., of the Mississippi Code of 1972, Ann. (hereinafter referred to as "the Act"), and you are hereby advised of the existence of said Act.

(2) All information, interviews, reports, statements, memoranda and test results, written or otherwise, received by (**Insert name of employer here**) through its drug and alcohol testing program are confidential communications and may not be used or received in evidence, obtained in discovery, or disclosed in any public or private proceedings, except in accordance with the Act and these regulations. Any information obtained by (**Insert name of employer here**) pursuant to the Act and these regulations shall be the property of the employer. (**Insert name of employer here**) shall not release to any person other than the employee or job applicant, or employer medical, supervisory or other personnel, as designated by (**Insert name of employer here**) on a need to know basis, information related to drug and alcohol test results unless: (a) The employee or job applicant has expressly, in writing, granted permission for (**Insert name of employer here**) to release such information; it is necessary to introduce a positive confirmed test result into an arbitration proceeding pursuant to a collective bargaining agreement, an administrative hearing under applicable state or local law, or a judicial proceeding, provided that information is relevant to the hearing or proceeding, or the information must be disclosed to a federal or state agency or other unit of the state or United States government as required under law, regulation or order, or in accordance with compliance requirements of a state or federal government contract, or disclosed to a drug abuse rehabilitation program for the purpose of evaluation or treatment of an employee; or there is a risk to public health or safety that can be minimized or prevented by the release of such information; provided, however, that unless such risk is immediate, a court order permitting the release shall be

obtained prior to the release of the information. The confidentiality provisions provided for by the Act shall not apply to other parts of an employee's or job applicant's personnel or medical files. If an employee refuses to sign a written consent form for release of information to persons as permitted in the Act, **(Insert name of employer here)** shall not be barred from discharging or disciplining the employee.

- (3) An employee or job applicant to be tested shall be given (1) a medication disclosure form to permit the employee or job applicant to disclose any non-prescription or prescription medications that have been taken within the last forty-five (45) days which may result in a positive test result, and (2) a statement that the form shall be submitted directly to the laboratory in order that (Insert name of employer here) has no access to the information disclosed on the form. The procedure for submission of the form shall ensure that no person other than the laboratory has access to the information disclosed on the form.